

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

RUSLAN ALEKHIN,
Petitioner,

v.

WARDEN OF FOLKSTON ICE
PROCESSING CENTER, *in their official capacity*; KRISTEN SULLIVAN, *in her official capacity as Field Office Director of Immigration and Customs Enforcement, Enforcement and Removal Operations Atlanta Field Office*; KRISTI NOEM, *in her official capacity as Secretary of Homeland Security*; PAMELA J. BONDI, *in her official capacity as Attorney General of the United States. Respondents.*

**PETITION FOR A WRIT OF
HABEAS CORPUS**

Case No. CV 225-082

INTRODUCTION

1. Petitioner Ruslan Alekhin (Mr. Alekhin), a [REDACTED] male [REDACTED] [REDACTED] [REDACTED] fleeing political persecution [REDACTED] [REDACTED] [REDACTED] has been detained without a bond hearing by Respondents for more than sixteen months, since January 10, 2024. In November 2024, an Immigration Judge (IJ) granted Mr. Alekhin asylum based on [REDACTED], but the Department of Homeland Security (DHS) appealed that decision to the Board of Immigration Appeals (BIA). Despite Mr. Alekhin having no criminal history whatsoever and maintaining close ties with his U.S. citizen sponsor, [REDACTED], DHS has refused to release him from custody. His prolonged detention has caused him significant emotional/mental distress, as well as unnecessary and unreasonable deprivation of his liberty.

2. DHS alleges that Mr. Alekhin is detained under 8 U.S.C. § 1225(b) as an “arriving” noncitizen and is thus ineligible for a bond hearing. 8 U.S.C. § 1225(b)(2); 8 C.F.R. §

1003.19(h)(2)(i)(B) (stating that an IJ cannot redetermine custody conditions of the executive); *Matter of M-S-*, 27 I&N Dec. 509, 513 (BIA 2005) (noting that “arriving” noncitizens “attempting to come into the United States at a port-of-entry” are ineligible for bond).

3. Given that his case is still pending before the BIA, Mr. Alekhin’s detention is likely to continue for many more months, if not years. His prolonged detention without bond, particularly when read in light of the Suspension Clause and associated case law, violates the Due Process Clause of the Fifth Amendment under the factors enumerated in *Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199 (11th Cir. 2016), *abrogated on other grounds by Jennings v. Rodriguez*, 583 U.S. 281 (2018), and *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

4. To remedy his unconstitutionally prolonged detention, Mr. Alekhin is entitled to an immediate individualized bond hearing before an IJ, at which the Government bears the burden by clear and convincing evidence and the IJ considers Mr. Alekhin’s ability to pay and alternatives to detention.

JURISDICTION AND VENUE

5. This case arises under the United States Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 *et. seq.*, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 1570. This Court has jurisdiction and may grant relief pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); U.S. Constitution, art. I, § 9, cl. 2 (“Suspension Clause”); 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 2201 (concerning remedies); and 28 U.S.C. § 1651 (concerning writs).

6. Mr. Alekhin is currently detained in the custody of Respondents at Folkston ICE Processing Center (Annex) (“Folkston”), which is in the Southern District of Georgia.

Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

7. Venue is proper in the Southern District of Georgia under 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2), (e)(1) because Mr. Alekhin is currently detained in this district at Folkston in Folkston, Georgia, where a substantial part of the events or omissions giving rise to this action occurred and continue to occur.

EXHAUSTION OF REMEDIES

8. Mr. Alekhin is not required to exhaust administrative remedies for his constitutional claims challenging his continued detention under 28 U.S.C. § 2241, and it is in the sound judicial discretion of this Court to exercise jurisdiction in this case. *See Santiago-Lugo v. Warden*, 785 F.3d 467, 474-75 & n.5 (11th Cir. 2015). Furthermore, there is no avenue by which Mr. Alekhin can present a constitutional challenge to his detention before agency authority, so he cannot be afforded a bond hearing without this Court's intervention. *See J.N.C.G. v. Warden, Stewart Det. Ctr.*, No. 4:20-CV-62-MSH, 2020 U.S. Dist. LEXIS 154500, at *9 (M.D. Ga. Aug. 26, 2020) (rejecting respondents' argument that administrative exhaustion was required for prolonged detention claim as "verg[ing] on Orwellian"). Regardless, Mr. Alekhin has unsuccessfully sought release through parole multiple times while his removal case was pending and after an IJ granted asylum, and there is no mechanism for administrative appeal of ICE's parole denials. 8 C.F.R. § 1003.19(h)(2)(i)(B).

PARTIES

9. Petitioner, Ruslan Alekhin, is ██████████ noncitizen ██████████ who was granted asylum on November 19, 2024. DHS appealed the decision on December 17, 2024, which remains pending. Petitioner is currently detained at Folkston in Folkston, GA.

10. Respondent, Warden of Folkston, is sued in their official capacity. Folkston is a detention center operated privately by GEO Group that contracts, via an intergovernmental services agreement with Charlton County, Georgia, with ICE to detain noncitizens. The Warden of Folkston oversees the facility's administration and management. They are Mr. Alekhin's immediate legal and physical custodian.

11. Kristen Sullivan is the Acting Field Office Director of the ICE Enforcement and Removal Operations Atlanta Field Office and is the federal agent charged with overseeing all ICE detention centers in Georgia, including Folkston. Ms. Sullivan is a legal custodian of Mr. Alekhin. She is sued in her official capacity.

12. Kristi Noem is the Secretary of DHS. DHS oversees ICE, which is responsible for administering and enforcing the immigration laws. Secretary Noem is the ultimate legal custodian of Mr. Alekhin and is sued in her official capacity.

13. Respondent Pamela J. Bondi is the Attorney General of the United States. Attorney General Bondi oversees the immigration court system, including the IJs who conduct bond hearings as her designees. She is sued in her official capacity.

STATEMENT OF FACTS

14. Mr. Ruslan Alekhin is a [REDACTED]

[REDACTED] On January

10, 2024, he and his [REDACTED] arrived at the Nogales, Arizona Port of Entry according to the date and time scheduled on the CBP One application. *Id. See also* Ex. 11, Record of Sworn Statement under INA § 235(b)(1) 3.

15. Pursuant to the Circumvention of Lawful Pathways (CLP) Rule, and until January 20 of this year, making an appointment on the CBP One application was the primary means for noncitizens seeking humanitarian relief to enter the United States while retaining eligibility for asylum. *See Department of Homeland Security, Fact Sheet: Circumvention of Lawful Pathways Final Rule* (May 11, 2023), <https://www.dhs.gov/archive/news/2023/05/11/fact-sheet-circumvention-lawful-pathways-final-rule> (“Noncitizens who cross the southwest land border or adjacent coastal borders of the United States without authorization after traveling through a third country will be presumed ineligible for asylum unless they... used the CBP One app to schedule a time and place to present at a port of entry...”). The Federal Register summary for the CLP Rule states that the provision seeks to limit entering without inspection and instead “encourage[] migrants to avail themselves of lawful, safe, and orderly pathways into the United States.” Circumvention of Lawful Pathways, 88 Fed. Reg. 31,314, 31,314 (May 16, 2023). The rule purportedly forwards this goal by creating a presumption of asylum ineligibility for those who do not “present[] at a port of entry, pursuant to a pre-scheduled time and place,” such as according to a CBP One appointment, or otherwise demonstrate extenuating circumstances such as a medical or other emergency. 8 C.F.R. § 1208.33(a)(2)(ii)(B). Mr. Alekhin and his [REDACTED] waited approximately two-and-a-half months in Mexico for their CBP One appointment. Ex. 1, Decl. of Pl. 1.

16. Although nearly 90% of individuals who arrived with a CBP One appointment were released with parole,¹ Mr. Alekhin was instead detained upon arrival and transferred to the Folkston ICE Processing Center in Folkston, Georgia. Although ICE referred him to the

¹ Dep’t of Homeland Sec. Off. of Inspector Gen., *CBP Did Not Thoroughly Plan for CBP One™ Risks, and Opportunities to Implement Improvements Exist* 2 (Aug. 19, 2024), available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-08/OIG-24-48-Aug24.pdf>.

Asylum Office for a credible fear interview to determine whether he could seek asylum in full removal proceedings, the Asylum Officer did not conduct an interview and instead issued him a discretionary Notice to Appear (NTA) that automatically initiated proceedings. *See* Ex. 8, Charges of Inadmissibility/Deportability. As of June 2, 2025, he has been in ICE custody for 509 days, or nearly seventeen months. *See* Ex. 1, Decl. of Pl. [REDACTED]

[REDACTED] *Id.* at 1.

17. Mr. Alekhin has no criminal history anywhere in the world, and at no point in time during his immigration court proceedings has Immigration and Customs Enforcement raised any national security-related bars. *Id.* *See also* Ex. 11, Record of Sworn Statement under INA § 235(b)(1) 3. When he arrived for his CBP One appointment on January 10, 2024, he indicated that Ms. [REDACTED] would be his sponsor to help him get settled in the U.S. *See* Ex. 2, Printout of ICE Enforce Alien Removal Module 2. Ms. [REDACTED] is the aunt of Mr. Alekhin's [REDACTED]. *See* Ex. 3, Excerpt of Parole Req. 2, Apr. 2, 2025. [REDACTED]

[REDACTED] [REDACTED] [REDACTED]. Since Mr. Alekhin was first detained in January 2024, he and Ms. [REDACTED] have spoken for twenty to forty minutes at least twice a week, and sometimes every day. *Id.* at 3, 22. In addition to providing him emotional and moral support, she contributes to his commissary at least once a month. *Id.* at 3, 22.

18. Mr. Alekhin's [REDACTED] was released from ICE detention and resides with Ms. [REDACTED] in Pennsylvania. [REDACTED]



19. Despite having no criminal history and maintaining close ties with his U.S. citizen sponsor, Mr. Alekhin's repeated attempts to be released while *pro se* were unsuccessful. Ms. [REDACTED] made at least four different requests for Mr. Alekhin's release on parole, in March, May, June, and August of 2024, to no avail. *See* Ex. 4, Sponsor Parole Reqs.

20. Mr. Alekhin was thus forced to pursue his asylum case *pro se* and while detained. The detention center's law library provided neither access to the Internet nor to translation services. As a result, he had no option other than relying on his [REDACTED]'s assistance in preparing his asylum case, including translating his asylum declaration [REDACTED]

[REDACTED] *See* Ex. 1, Decl. of Pl. 5; Ex. 3, Excerpt of Parole Req. 2, Apr. 2, 2025. On October 31, 2024, he appeared for his individual hearing, where he answered the immigration judge's questions on his asylum claim, was cross-examined by the ICE trial attorney, and made closing arguments on his own behalf. On November 19, 2024, the IJ issued a written decision granting him asylum, finding that he met his burden and had established a well-founded fear of persecution [REDACTED]

[REDACTED] *See* Ex. 5, Printout of Executive Office for Immigration Review Courts and Appeals System (ECAS) 1.

21. On December 17, 2024, DHS appealed the IJ's decision granting asylum. However, in filling out the Notice of Appeal, Form EOIR-26, DHS incorrectly listed Mr. Alekhin's address as 146 CCA Road, Lumpkin, Georgia 31815, which is the address for Stewart Detention Center. Ex. 6, ICE Notice of Appeal 3. The "proof of service" section of

that same form also lists the 146 CCA Road address. *Id.* At no point in time has Mr. Alekhin ever resided at Stewart Detention Center. Ex. 7, Decl. of Pl. in Mot. to Dismiss. Because DHS incorrectly identified Mr. Alekhin’s address, he never received their Notice of Appeal. *Id.* He only knew that DHS filed the appeal because he called the EOIR case hotline. *Id.* Only the Notice of Appeal articulates DHS’s reasons for appealing the IJ decision’s granting asylum. Mr. Alekhin was thus preparing his response brief originally due on February 26 without an attorney and without knowing DHS’s reasons for appealing his case. *Id.* Respondent’s immigration counsel entered appearance on February 13, 2025 and promptly received a briefing extension for March 19, 2025. Ex. 5, Printout of ECAS 1.

22. On March 13, 2025, Respondent’s immigration attorney, Ms. Alizeh Sheikh, filed a motion to summarily dismiss DHS’s appeal for deficient service of process. *See id.* DHS did not respond to the motion within thirteen days, and it was thus deemed unopposed. *See* BIA Practice Manual, Chapter 5.11 (stating that “a motion will be deemed unopposed unless the opposing party responds within 13 days from the date of service of the motion” and citing 8 C.F.R. § 1003.2(g)(3)). Attorney Sheikh accordingly filed a Notice of DHS’s Non-Opposition to the Motion to Summarily Dismiss on May 13, 2025. Ex. 5, Printout of ECAS 1. On May 28, 2025, more than two months after Attorney Sheikh originally moved to dismiss DHS’s appeal, DHS filed their response brief opposing dismissal without any explanation for their delay and acknowledging that their Notice of Appeal was served at the incorrect address. *See id.* On March 19, 2025, both DHS and Attorney Sheikh filed briefs addressing the merits of the appeal. *Id.* Both the motion to summarily dismiss and the appeal remain pending. *Id.*

23. On April 2, 2025, Attorney Sheikh filed a request with ICE requesting Mr. Alekhin's release on parole, referencing his asylum grant, his close ties to his U.S. citizen sponsor, and [REDACTED] See Ex. 3, Excerpt of Parole Req. 1-6, Apr. 2, 2025. Within just a few hours of submitting the request, ICE denied it, citing only its pending appeal. Ex. 9, Denial of Parole Request. DHS is thus currently detaining Mr. Alekhin based on an appeal that it does not deny it never provided him notice of.

24. In addition to the difficulties he has experienced representing himself in immigration proceedings while detained, Mr. Alekhin has suffered punitive conditions while detained. *See generally* Ex. 1, Decl. of Pl. In March, he accidentally stepped on the back of a facility officer's shoe, and despite apologizing profusely, he was placed in solitary confinement for about 20 days. *Id.* at 2. While in solitary confinement, each day he could choose between either "outside time" for two hours or watching TV for one hour. During "outside time," he would still be confined to a small space, being brought to a yard and placed inside one of four metal cages that is about 2.5m wide by 3m long. *Id.*

25. Because of this accident, Mr. Alekhin is now held in medium security. He must wear an orange prison uniform, and every night for several hours he is locked in a ~2.5m x 5m cell with another cellmate. *Id.* at 1-2. The fence surrounding the outside yard, where detained noncitizens spend recreation time, is lined with barbed wire. *Id.* at 2. Although Mr. Alekhin has chosen to work, the most he was paid was \$2.75 for three to four of work, less than \$1/hour. *Id.* at 3. More broadly, it is the detainees themselves who clean the facility and cook their meals, not staff members. *Id.* Sometimes crucial supplies will be missing, including one or two instances where there was no toilet paper in the whole detention center for a few days in a row. *Id.* In one other instance, despite suffering from a contagious skin

disease, Mr. Alekhin was not provided sufficient pairs of underwear and had to wash his own underwear in the shower in order to have a clean pair. *Id.* at 3-4.

LEGAL FRAMEWORK

I. Asylum, Withholding of Removal, and Relief under the Convention Against Torture

26. Noncitizens in immigration removal proceedings may obtain three primary forms of relief based on fear of return to their home country: asylum, withholding of removal, and relief under the Convention Against Torture (CAT). There are several eligibility restrictions for asylum, 8 U.S.C. § 1158(a)(2), fewer restrictions on eligibility for withholding of removal, 8 U.S.C. § 1231(b)(3)(B)(iii); 8 C.F.R. § 1208.16, and no restrictions on eligibility for deferral of removal under CAT, 8 C.F.R. § 1208.17(a).

27. In removal proceedings, the noncitizen presents their claims for protection before an IJ during their individual merits hearing. 8 U.S.C. § 1229a(c)(4). The IJ then issues a decision, which the noncitizen or DHS may appeal to the BIA within 30 days. 8 U.S.C. § 1229a(c)(1); 8 C.F.R. §§ 1003.1(b), 1003.38(b). If the BIA denies relief, the noncitizen can petition for review in the relevant federal circuit court of appeals. 8 U.S.C. § 1252(b). But if the BIA grants relief, DHS cannot seek judicial review, and that relief is final. *See id.* (providing only for judicial review of “an order of removal”).

II. Noncitizens Designated as “Applicants for Admission”

28. ICE designated, and the IJ sustained, the charge that Mr. Alekhin is an “arriving” noncitizen who “applied for admission... at the DeConcini port of entry in Nogales, Arizona.” Ex. 8, Charges of Inadmissibility/Deportability. A noncitizen is deemed to be “arriving” if he is “an applicant for admission coming or attempting to come into the United States at a port-of-entry” or is “seeking transit through the United States at a port-of-entry.” 8

C.F.R. §§ 1.2, 1001.1(q). The Immigration and Nationality Act (INA) defines an “applicant for admission” as a noncitizen “present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival...).” 8 U.S.C. § 1225(a)(1).

29. Noncitizens deemed “arriving” are ineligible for a bond hearing before an IJ. *See* 8 U.S.C. § 1225(b)(2) (stating that the noncitizen “shall be detained” for a removal proceeding); *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) (“[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.”); 8 C.F.R. § 1003.19(h)(2)(i)(B) (stating that “an immigration judge may not redetermine conditions of custody imposed by the Service with respect to...arriving” noncitizens); *Matter of M-S-*, 27 I&N Dec. 509, 513 (BIA 2005) (noting that “arriving” noncitizens “attempting to come into the United States at a port-of-entry” are ineligible for bond per the plain language of the regulations).

30. The only option for noncitizens like Mr. Alekhin, who adhered to DHS regulations and policy by presenting at a port of entry with a CBP One appointment, is release on parole by ICE. But ICE may grant parole “only on a case-by-case basis” for “urgent humanitarian reasons or significant public benefit,” 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(b), and even then only if the noncitizen presents “neither a security risk nor a risk of absconding,” 8 C.F.R. § 212.5(b); *see Jennings*, 583 U.S. at 288. Such bases for release include “(1) Aliens who have serious medical conditions in which continued detention would not be appropriate” and “(5) Aliens whose continued detention is not in the public interest as determined by . . . [certain DHS officials.]” 8 C.F.R. §§ 212.5(b)(1), (5).

31. ICE’s parole decisions are entirely discretionary and unreviewable by immigration judges. 8 C.F.R. § 1003.19(h)(2)(i)(B) (stating that “an immigration judge may

not redetermine conditions of custody imposed by the Service with respect to...arriving" noncitizens). Nor may any federal court "set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole." 8 U.S.C. § 1226(e). Thus, the statute contemplates that a noncitizen remains in detention until the completion of their removal proceedings, unless ICE decides in its unreviewable discretion to release him on parole. *See* 8 U.S.C. § 1225(b)(2)(A).

32. When a noncitizen presents themselves at a port of entry or is apprehended soon after entering without inspection and then asserts an asylum claim, DHS typically classifies them as "applicants for admission" and places the noncitizen in expedited removal proceedings under 8 U.S.C. § 1225(b). In these proceedings, they first undergo a credible fear interview (CFI) with an asylum officer to screen for fear-based relief eligibility. 8 U.S.C. § 1225(b)(1)(B)(i). If the noncitizen passes their CFI, the asylum officer refers them to immigration court for full removal proceedings under 8 U.S.C. § 1229a. § 1225(b)(1)(B)(ii). An asylum officer also has the authority to refer an asylum seeker for proceedings without making a credible fear determination, 8 C.F.R. § 208.30(b), as in the case of Mr. Alekhin.

III. ICE's Policy Directive for Individuals Who Have Been Granted Relief

33. ICE policy spanning more than two decades favors the prompt release of noncitizens who have been granted asylum, withholding, or CAT relief. In 2004, ICE issued a policy memorandum (the Directive) stating that "it is ICE policy to favor the release of [noncitizens] who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain." Ex. 10, ICE Policies at 2.

34. ICE has reaffirmed this policy multiple times. In a 2012 announcement, it stated that the 2004 ICE memorandum is "still in effect and should be followed" and that "[t]his

policy applies at all times following a grant of protection, including during any appellate proceedings and throughout the removal period.” *Id.* at 3. More recently, in 2021, Acting ICE Director Tae Johnson circulated a memorandum to all ICE employees reminding them of the “longstanding policy” that “absent exceptional circumstances, …noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge should be released.” *Id.* at 4. This policy remains in effect.

IV. Constitutional Rights of Noncitizens

35. The Fifth Amendment to the U.S. Constitution, when read in conjunction with the Suspension Clause, contemplates the claim made here: that a noncitizen’s prolonged detention without a bond hearing is unconstitutional, regardless of whether or not they are deemed “arriving” or “applicants for admission.”

A. The liberty interest is of particular Constitutional significance in light of the Suspension Clause and separation of powers concerns.

36. The right to liberty is a Due Process interest unlike any other. “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” which Due Process protects.”); *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (“[T]he most elemental of liberty interests [is] the interest in being free from physical detention…”). The Supreme Court has accordingly “always been careful not to ‘minimize the importance and fundamental nature’ of the individual’s right to liberty.” *Foucha*, 504 U.S. at 80 (quoting *United States v. Salerno*, 481 U.S. 739, 750 (1987)).

37. Because the Suspension Clause is the constitutional mechanism for considering an arbitrary detention claim, Supreme Court precedent on the scope of the Suspension Clause necessarily informs an analysis of the Due Process interest in freedom from detention. *Boumediene v. Bush*, 553 U.S. 723, 739 (2003) (“The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom.”). That precedent demonstrates that habeas challenges to unlawful detention do not merely implicate Due Process, but also separation of powers concerns involving the political branches, particularly the Executive.

38. The Suspension Clause is rooted in the common law writ of habeas corpus, which served to “guard against the abuse of monarchial power.” *Id.* at 739-740. “The writ of habeas corpus as it existed at common law provided a vehicle to challenge all manner of detention by government officials.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 137 (2020). *See also Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (“It is clear...from the common-law history of the writ...that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody.”); *Boumediene*, 553 U.S. at 741 (“The king must not be under man but under God and under the law, because law makes the king.”) (quoting 2 *Bracton, On the Laws and Customs of England* 33 (S. Thorne transl. 1968)).

39. The Framers viewed the Suspension Clause in light of this common law history as “an indispensable mechanism for monitoring the separation of powers,” by requiring the political branches to justify their deprivation of liberty. *Id.* at 765; *see also id.* at 742 (“[P]endular swings to and away from individual liberty were endemic to undivided, uncontrolled power. The Framers’ inherent distrust of governmental power was the driving

force behind the constitutional plan that allocated powers among three independent branches.”); *Zadvydas*, 533 U.S. at 695 (stating that while the judicial branch “defer[s] to executive and legislative decisionmaking” in immigration matters, “that power is subject to important constitutional limitations”); *Castro v. United States Dep’t of Homeland Sec.*, 835 F.3d 422, 449 n.32 (3d Cir. 2016) (“We doubt...that Congress could authorize, or that the Executive could engage in, the indefinite, hearingless detention of a[] [noncitizen] simply because the [noncitizen] was apprehended shortly after clandestine entrance.”).

40. Because the writ was originally used to challenge the king’s power to detain, the Suspension Clause’s protections are “strongest” in the context of executive detention, such as the one at issue here. *Immigr. & Nat’y Serv. v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Munaf v. Geren*, 553 U.S. 674, 679 (2008) (“Habeas is at its core a remedy for unlawful executive detention.”); *Boumediene*, 553 U.S. at 783 (“Where a person is detained by executive order, rather than, say, after being tried and convicted in a court, the need for collateral review is most pressing.”).

B. The liberty interest applies to noncitizens who are deemed “arriving” and is distinct from the interest in remaining permanently in the United States.

41. The constitutional interest in freedom from unlawful detention applies to all noncitizens. First, the plain language of the Due Process clause states that “[n]o person shall be...deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. (emphasis added). A noncitizen is a “person,” *Wong v. United States*, 163 U.S. 228, 237-38 (1896), and the Fifth Amendment does not differentiate between “persons” based on who they are or their manner of entry, *see Zadvydas*, 533 U.S. at 590 (“A statute permitting indefinite detention of an alien would raise a serious constitutional problem.”).

42. Furthermore, recent Supreme Court precedent reaffirms noncitizens' fundamental constitutional interest in liberty, as distinct from the interest in legally being admitted into or remaining in the country. In *St. Cyr*, the Supreme Court noted that the common law writ of habeas corpus was "available to nonenemy aliens as well as to citizens... to challenge executive and private detention in civil cases as well as criminal." 533 U.S. at 301-02. "Before and after the enactment in 1875 of the first statute regulating immigration," federal courts' jurisdiction over writs of habeas corpus was "regularly invoked on behalf of noncitizens, particularly in the immigration context." *Id.* at 305 (citing *United States v. Jung Ah Lung*, 124 U.S. 621, 626-632 (1888)).

43. Seven years after *St. Cyr*, the Supreme Court held in *Boumediene* that the Suspension Clause "has full effect at Guantanamo Bay," allowing the noncitizens detained there to challenge the lawfulness of their detention despite having never sought admission to the United States and being located outside its sovereign territory in military confinement. 553 U.S. at 768-69, 771. Although the Court did not explicitly delineate the contours of the Guantanamo petitioners' due process interests, it stated that its own determination of whether Congress's statutory replacement of a habeas writ is constitutionally adequate "accords with our test for procedural adequacy in the due process context." *Id.* at 781 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). The Court concluded that the statutory procedures before it were constitutionally inadequate, in part because the proceedings lacked an adversarial structure and there were no means to assess the sufficiency of the Government's evidence. *Id.* at 786-87, 791.

44. Finally, the Court in *Thuraissigiam* ensured that its holding—that noncitizens' procedural due process interests in the expedited removal context are coextensive with what

Congress confers by statute—would not extend to detention-related claims. It cited prior case law as “reaffirm[ing]” that the Suspension Clause “at a minimum, protects the writ as it existed in 1789,” whereby it “could be invoked by aliens already in the country who were held in custody pending deportation” to “challenge [their] detention.” *Thuraissigiam*, 591 U.S. 104, 116, 137 (internal quotation marks omitted). The petitioner in *Thuraissigiam*, like Mr. Alekhin, fell under the 8 U.S.C. § 1225(b) detention authority, but his habeas petition did not challenge the lawfulness of his *detention*.

45. Throughout *Thuraissigiam*, the Supreme Court took care to emphasize the distinction between habeas petitions challenging detention versus those seeking review of procedures concerning admission into the country. *See* 591 U.S. at 104 (“*St. Cyr* reaffirmed that the common-law habeas writ provided a vehicle to challenge detention and could be invoked by [noncitizens] already in the country who were held in custody pending deportation. It did not approve respondent’s very different attempted use of the writ.”); at 107 (“Habeas has traditionally been a means to secure *release* from unlawful detention, but respondent invokes the writ to achieve an entirely different end.”) (emphasis in original); at 115 (“His petition made no mention of release from custody.”); at 117 (stating that at the time the Constitution was adopted, “[t]he writ simply provided a means of contesting the lawfulness of restraint and securing release”); *id.* (“In this case, however, respondent did not ask to be released. Instead, he sought entirely different relief...”); at 119 (“[R]espondent does not want ‘simple release’ but, ultimately, the opportunity to remain lawfully in the United States.”); at 124 (“In these cases, as in all the others noted above, habeas was used ‘simply’ to seek release from allegedly unlawful detention.”); at 135-36 (“And in all the cited cases

concerning [noncitizens] detained at entry, unlike the case now before us, what was sought—and the only relief considered—was release.”).

46. Supreme Court precedent thus establishes that all noncitizens have a constitutional due process interest in freedom from unlawful detention, regardless of whether they have been admitted or not.² That liberty interest, in light of the Suspension Clause and broader separation-of-powers concerns, has fundamental constitutional importance and is not set merely at the ceiling of what the Executive may find appropriate.

C. Jennings v. Rodriguez has no bearing on the constitutional claim made here.

47. *Jennings v. Rodriguez*, 583 U.S. 281 (2018) does not undermine this constitutional analysis. In *Jennings*, the Supreme Court considered a challenge to prolonged detention under §§ 1226(c) and 1225(b). It resolved the case entirely on statutory grounds, holding under a theory of constitutional avoidance that the Ninth Circuit had erred by interpreting §§ 1226(c) and 1225(b) to implicitly require bond hearings after six months of detention. 583 U.S. at 285. The Court did not address whether the Due Process Clause requires bond hearings in such cases and remanded to the Ninth Circuit to address the issue in the first instance. *Id.* at 312. And indeed, when remanding to the district court to address

² Numerous other courts take a similar view of the above Supreme Court precedent, including *Thuraissigiam*, in ultimately holding that Due Process requires individuals experiencing prolonged detention under 8 U.S.C. § 1225(b) be provided with a bond hearing. *See, e.g., A.L. v. Oddo*, No. 3:24-302, 2025 U.S. Dist. LEXIS 19683, at *5 (W.D. Pa. Jan. 6, 2025) (“Nowhere in [*Thuraissigiam*] did the Supreme Court suggest that arriving [noncitizens] being held under § 1225(b) may be held indefinitely and unreasonably with no due process implications, nor that such aliens have no due process rights whatsoever.”); *Leke v. Hott*, 521 F. Supp. 3d 597, 604 (E.D. Va. 2021) (“Quite clearly, *Thuraissigiam* does not govern here, as the Supreme Court there addressed the singular issue of judicial review of credible fear determinations and did not decide the issue of an Immigration Judge’s review of prolonged and indefinite detention. And interestingly, the very relief Petitioner seeks here—a bond hearing before an Immigration Judge—closely resembles the administrative review process *Thuraissigiam* necessarily deemed sufficient to obviate the need for due process.”); *da Silva v. Nielsen*, No. 5:18-cv-932, 2019 U.S. Dist. LEXIS 227513, at *28-29 (S.D. Tex. Mar. 29, 2019) (“In *Zadvydas*, for example, the Court did not distinguish among classes of [noncitizens] when it stated that a ‘statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem.’”); *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 858 (D. Minn. 2019) (“But everyone seems to agree that, under the Due Process Clause, neither [noncitizens] ‘detained under § 1225(b)(2)(A)’ nor noncitizens ‘detained under § 1226(c)’] can be detained indefinitely.”).

the constitutional question, the Ninth Circuit cast “grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government’s arbitrary deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

48. Post-*Jennings*, courts across the country, including this one, have agreed that Due Process requires noncitizens to be provided with a bond hearing when their detention during removal proceedings becomes unreasonably prolonged. *See Dorley v. Normand*, No. 5:22-cv-62, 2023 U.S. Dist. LEXIS 93091, at *8 (S.D. Ga. Apr. 3, 2023) (noting that *Jennings* “left open the possibility of as-applied procedural due process challenges to § 1226(c) detention, particularly where the petitioner alleges the detention has become unreasonably prolonged”); *Clue v. Greenwalt*, No. 5:21-cv-80, 2022 U.S. Dist. LEXIS 221848, at *18 (S.D. Ga. Oct. 24, 2022) (finding that Petitioner’s prolonged mandatory detention under § 1226(c) was unconstitutional and ordering a bond hearing); *Black v. Decker*, 103 F.4th 133, 145 (2d Cir. 2024) (“read[ing] *Zadvydas, Demore*, [and] *Jennings*, ...to suggest strongly that due process places some limits on detention under section 1226(c) without a bond hearing”); *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 210 (3d Cir. 2020) (“In sum, even after *Jennings*, [a noncitizen] lawfully present but detained under § 1226(c) can still challenge his detention under the Due Process Clause.”); *Hernandez-Lara v. Lyons*, 10 F. 4th 19, 41 (1st Cir. 2021) (upholding grant of habeas relief to petitioner challenging unconstitutionally prolonged detention under § 1226(a)); *Velasco Lopez v. Decker*, 978 F.3d 842, 846 (2d Cir. 2020) (same).

49. Many other district courts have held that this post-*Jennings* analysis applies equally to noncitizens detained under 8 U.S.C. § 1225(b), like Mr. Alekhin. These

noncitizens must be provided with a bond hearing when their detention becomes unreasonably prolonged. *See, e.g., Akhmadjanov v. Oddo*, No. CV 3:25-35, 2025 U.S. Dist. LEXIS 36051 (W.D. Pa. Feb. 28, 2025); *Ortiz-Castillo v. United States*, No. 2:23-cv-01485-RFB-MDC, 2024 U.S. Dist. LEXIS 31250 (D. Nev. Feb. 23, 2024); *Djelassi v. ICE Field Office Dir.*, 434 F. Supp. 3d 917 (W.D. Wash. 2020); *Tuser E. v. Rodriguez*, 370 F. Supp. 3d 435 (D. N.J. 2019); *Pierre v. Doll*, 350 F. Supp. 3d 327, 332 (M.D. Pa. 2018). The Eleventh Circuit has indicated concordance with this finding. *See Barillas v. Field Off. Dir. for ICE Miami Off. of Enforcement & Removal Operations*, 697 F. App'x 624, 625 (11th Cir. 2017) (recognizing that arriving noncitizen released on parole with conditions “has an interest in a determination that she, despite her status...is entitled to basic procedural protections when her liberty is denied” and the district “court could grant effectual relief—for instance, a hearing at which [she] could challenge her parole conditions” and “remanding for further proceedings.”) (internal quotation marks omitted).

D. The Sopo factors provide a fitting framework for conducting a due process analysis of Mr. Alekhin’s detention.

50. Having established that arriving noncitizens have a Due Process interest in freedom from prolonged, unreasonable detention, and that interest’s ceiling is not wholly determined by Congress or the President, the content of those Due Process protections must be elaborated. To align with due process, detention must “bear [a] reasonable relation to the purpose for which the individual [was] committed.” *Zadvydas*, 533 U.S. at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). The Supreme Court has recognized only two valid purposes for immigration civil detention based on its analysis of the detention statutes at issue in *Zadvydas* and *Demore v. Kim*: to mitigate the risks of danger to the community and to prevent flight. *Id.* at 690, 699 (noting these two “goals” of the statute and stating that

reasonableness should be measured “primarily in terms of the statute’s basic purpose”); *Demore v. Kim*, 538 U.S. 510, 527-28 (2003) (stating that the statutory provision at issue “necessarily serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings”); *Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199, 1210 (11th Cir. 2016) (“The Supreme Court further instructed that the reasonableness of the length of a criminal [noncitizen’s] detention should be measured primarily in terms of the statute’s basic purpose.”) (internal quotation marks omitted). Due process requires “adequate procedural protections” to ensure that these purported justifications for physical detention “outweigh[] the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotations omitted).

51. The Eleventh Circuit in *Sopo v. U.S. Att’y Gen.* determined under what circumstances an individualized bond hearing may ever be required in order to protect the liberty interest of noncitizens detained under § 1226(c). First, “[u]nder the Due Process Clause, *civil detention* is permissible only where there is a ‘special justification’ that ‘outweighs the individual’s constitutionally protected interest in avoiding physical restraint.’” 825 F.3d at 1210 (emphasis in original). Referencing Justice Kennedy’s concurring opinion in *Demore*, the Eleventh Circuit emphasized that *Demore* included “a strong constitutional caveat about due process concerns as to continued mandatory detention where the duration of the removal proceedings is unreasonably long or delayed.” *Id.* at 1212.

52. Since “§ 1226(c) may become unconstitutionally applied if a criminal [noncitizen]’s detention without even a bond hearing is unreasonably prolonged,” the Eleventh Circuit therefore joined five other Circuit Courts of Appeals in finding an “implicit reasonable time limitation” based on the text of the statute. *Id.* at 1213. Detention “under §

1226(c) is constitutional for a reasonable period of time to complete the removal proceedings, but as a matter of constitutional avoidance, at some point such detained [noncitizens] become entitled to an individualized bond hearing.” *Id.* at 1202. The Supreme Court’s 2018 decision in *Jennings* abrogated *Sopo* insofar as it read a temporal limitation into the text of § 1226(c). *See Jennings*, 583 U.S. at 305-06.³

53. Although *Sopo* is no longer binding precedent, this Court among others in the Eleventh Circuit has found that *Sopo*’s reasoning as to when detention becomes “unreasonable and unjustified” continues to serve as persuasive authority for as-applied constitutional challenges to prolonged detention for noncitizens in removal proceedings. *See, e.g.*, *Clue*, 2022 U.S. Dist. LEXIS 221848, at *10 (stating that the *Sopo* analysis is “highly instructive as to determining if prolonged detention under § 1226(c) does, in fact, violate a petitioner’s right to procedural due process”); *Dorley*, 2023 U.S. Dist. LEXIS 93091, at *10 (stating the same); *S.C. v. Warden, Stewart Det. Ctr.*, No. 4:23-CV-64-CDL-MSH, 2024 U.S. Dist. LEXIS 33920, at *12 (M.D. Ga. Jan. 5, 2024), *report and recommendation adopted*, 2024 U.S. Dist. LEXIS 32707 (M.D. Ga. Feb. 26, 2024) (“Although *Sopo* was vacated and its constitutional avoidance rationale rejected by the Supreme Court in *Jennings*, most district courts in the Eleventh Circuit, including this one, have cited it as persuasive authority on due process claims for prolonged detention.”); *J.N.C.G. v. Warden, Stewart Det. Ctr.*, No. 4:20-CV-62-MSH, 2020 U.S. Dist. LEXIS 154500, at *17 (M.D. Ga. Aug. 26, 2020) (“For these reasons, the Court concludes that Petitioner’s as-applied due process challenge is best analyzed using the factors outlined in *Sopo*, which, although only persuasive authority, provides useful guidance in evaluating prolonged § 1226(c) detention.”).

³ The Eleventh Circuit vacated the original *Sopo* decision on rehearing after the appeal was rendered moot by the petitioner being removed from the U.S. *Sopo v. U.S. Att'y Gen.*, 890 F.3d 952, 953-54 (11th Cir. 2018).

54. In *Sopo*, the Eleventh Circuit identified five non-exhaustive factors to “guide a district court in determining whether a particular [noncitizen]’s continued detention...is necessary to fulfilling Congress’ aims of removing [noncitizens with relevant criminal histories] while preventing flight and recidivism.” 825 F.3d at 1217. Courts analyze (1) the length of immigration detention without a bond hearing, (2) whether the immigration detention facility is meaningfully different from a criminal prison, (3) the reason for protracted removal proceedings, (4) the likelihood of removal, (5) the length of immigration versus criminal detention. *Id.* at 1217-19. The Eleventh Circuit emphasized that this “list of factors is not exhaustive” and “the factors that should be considered will vary depending on the individual circumstances present in each case.” *Id.* at 1218.

55. Although Mr. Alekhin is detained pursuant to § 1225(b), rather than § 1226(c), the *Sopo* factors still provide a fitting framework for analyzing his pre-removal order detention. This is so because the *Sopo* factors were developed based on the balancing between “the individual’s constitutionally protected interest in avoiding physical restraint” and the government’s “special justification” for detaining noncitizens, and that balancing analysis applies similarly to Mr. Alekhin. *Id.* at 1210.⁴

⁴ Numerous other district courts have likewise applied multi-factor due process tests originally developed in the context of detention under § 1226(c) to noncitizen habeas petitioners detained under different statutory provisions, including § 1225(b). *See, e.g., Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 850 (E.D. Va. 2020) (applying a five-factor balancing test originally developed in the § 1226(c) context to a Petitioner detained under § 1225(b)); *Jamal*, 358 F. Supp. 3d at 858 (noting that courts analyzing § 1225(b) detention “seem to apply pretty much the same factors” as those analyzing § 1226(c) detention); *Pierre*, 350 F. Supp. 3d at 331-33 (relying on case law from the § 1226(c) context in ultimately holding that Petitioner’s prolonged detention without a bond hearing under § 1225(b) was unconstitutional); *Lett v. Decker*, 346 F. Supp. 3d 37, 386 (S.D.N.Y., Oct. 10, 2018) (stating that when “it comes to prolonged detention, the Court sees no logical reason to treat individuals at the threshold of entry seeking asylum under § 1225(b), like Petitioner, differently than other classes of detained [non-citizens]”); *Singh v. Barr*, No. 1:19-cv-1096, 2020 U.S. Dist. LEXIS 38652, at *19 (W.D.N.Y. Mar. 2, 2020) (applying a multi-factorial test developed in the § 1226(c) context to a Petitioner detained under § 1225(b)); *da Silva*, 2019 U.S. Dist. LEXIS 227513, at *29 (same).

56. The first two *Sopo* factors—the length of time detained without a bond hearing and punitive detention conditions—concern the noncitizen’s due process interest in freedom from imprisonment. They are at minimum equally applicable to Mr. Alekhin as compared to someone detained under § 1226(c), since he is functionally in the same situation. Furthermore, the statute under which he is detained has no bearing on the extent of his constitutional due process rights. Indeed, Supreme Court precedent on the due process liberty interest supports *Sopo*’s inquiry into the length of detention, *Demore*, 538 U.S. at 513 (holding that detention without bail “for the brief period necessary for removal proceedings” is constitutional, and emphasizing that “detention at stake under § 1226(c) lasts roughly a month and a half in the vast majority of cases in which it is invoked”); *Zadvydas*, 533 U.S. at 701 (“We do have reason to believe...that Congress previously doubted the constitutionality of detention for more than six months.”), the sufficiency of any prior custody-related proceedings, *Boumediene*, 553 U.S. at 767 (stating that a sufficient statutory substitute for the habeas writ must have certain procedural protections and an adversarial mechanism); *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (“A fundamental requirement of due process is the opportunity to be heard.”), and the similarities between penal and civil immigration detention, *Zadvydas*, 533 U.S. at 690 (“The proceedings at issue here are civil, not criminal, and we assume that they are nonpunitive in purpose and effect.”); *Application of Gault*, 387 U.S. 1, 27 (1967) (finding it relevant to the due process analysis that a “delinquent” child in juvenile detention was confined in conditions that amounted to incarceration).⁵

⁵ Several other courts that have assessed the constitutionality of prolonged detention under § 1225(b) have also found these factors to be relevant. See, e.g., *Singh v. Sabol*, No. 1:16-cv-02246, 2017 U.S. Dist. LEXIS 64888, at *6 (M.D. Pa., Apr. 6, 2017) (noting that the constitutionality of detention is a function of its length); *Leke*, 521 F. Supp. 3d at 603 (same); *Singh v. Barr*, 2020 U.S. Dist. LEXIS 38652, at *19 (assessing whether the parole process at § 1182(d)(5)(A) provides adequate due process protection and finding that it does not); *Bermudez Paiz v. Decker*, No. 18-CV-4759, 2018 U.S. Dist. LEXIS 217604, at *29 n.14 (S.D.N.Y. Dec. 27, 2018) (same); *Djelassi*, 434 F. Supp.

57. As for the final two factors—the likelihood of removal and the length of immigration versus criminal detention—those continue to be relevant in the § 1225(b) context because they concern the government’s purposes for detention, and there is significant overlap in the purposes underlying § 1226(c), the provision at issue in *Sopo*, and § 1225(b). *See Zadvydas*, 533 U.S. at 699 (stating that the reasonableness of detention should be measured “in terms of the statute’s basic purpose”). *Demore* identified Congress’s intent in passing § 1226(c) as preventing noncitizens with a criminal history from fleeing. 538 U.S. at 528. Meanwhile, an analysis of the legislative history leading to the passage of the expedited removal procedures codified at § 1225(b) shows that Congress sought to streamline the asylum application process and prevent supposedly “frivolous” asylum applications.⁶ Thus, the “flight risk” concern appears relevant both to those detained under § 1226(c) and arriving noncitizens seeking asylum and detained under § 1225(b).

58. However, the analysis does not end there. In passing the expedited removal provisions, Congress also sought to protect the right to seek asylum. Proponents of the bill “emphasized the importance of providing ‘major safeguards’ for asylum seekers, noting that the law ‘must not turn a blind eye to egregious violations of human rights.’”⁷ Congress then commissioned a study “on [the] effect of expedited removal provisions on asylum claims.” 22 U.S.C. § 6474(b). The study would “determine whether immigration officers performing

³d at 921 (same); *Mbalivoto*, 527 F. Supp. 3d at 849 (same); *Lett*, 346 F. Supp. 3d at 388 (finding it relevant that the Petitioner was detained at a facility also used for criminal incarceration).

⁶ *See* Simona Agnolucci, *Expedited Removal: Suggestions for Reform in Light of the United States Commission on International Religious Freedom Report and the Real ID Act*, 57 Hastings L.J. 619, 624 (2006).

⁷ *Id.* (citing 142 Cong. Rec. S10572-01, 10572 (daily ed. Sept. 16, 1996) (statement of Sen. Simpson) and 142 Cong. Rec. H11071-02, 11081 (daily ed. Sept. 25, 1996) (statement of Rep. Hyde)). The Supplementary Information to the regulations implementing expedited removal echoes these concerns. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,318 (Mar. 6, 1997) (“The Service has very carefully considered how best to ensure that bona fide asylum claimants are given every opportunity to assert their claim...”).

duties under section 1225(b)...with respect to [noncitizens] who may be eligible to be granted asylum are engaging in" activities that undermine the right to seek asylum, including "detaining such aliens improperly or in inappropriate conditions." *Id.* Congress's decision to commission a study on how expedited removal affects the detention conditions of asylum seekers indicates that it sought to avoid placing asylum seekers in a punitive environment.⁸ The cost to seek asylum should not be months, or even years, of imprisonment.

59. In light of Congress's intent to protect the right to seek asylum for those falling within the ambit § 1225(b), the due process balancing for asylum seekers detained under that provision should not penalize the noncitizen for pursuing avenues like appeal or petitions for review. Additionally, punitive conditions in detention should weigh particularly heavily, particularly for asylum seekers like Mr. Alekhin who cannot reasonably be said to pose a danger to society because they have no criminal history whatsoever.

ARGUMENT

V. Under an analysis of the *Sopo* factors, Mr. Alekhin's detention without bond has become unconstitutionally prolonged.

60. Mr. Alekhin's nearly seventeen-month-long detention has become unconstitutionally prolonged when analyzed under the Eleventh Circuit's *Sopo* factors, as well as the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Thus, he is constitutionally entitled to a bond hearing before the IJ with the burden on the Government by clear and convincing evidence, along with consideration of his ability to pay.

⁸ Indeed, in its report published at the conclusion of its study, the U.S. Commission on International Religious Freedom (USCIRF) "found that most asylum seekers in Expedited Removal are detained under conditions which may be suitable in the criminal justice system, but are entirely inappropriate for asylum seekers fleeing persecution." USCIRF, *Report on Asylum Seekers in Expedited Removal* 10 (Feb. 2005). "The Study found that most asylum seekers are detained in jails and in jail-like facilities, often with criminal inmates as well as aliens with criminal convictions." *Id.* at 7.

A. The Eleventh Circuit's Sopo Factors demonstrate that Mr. Alekhin's continued detention is unconstitutional.

61. The *Sopo* factors are analyzed in the order they are proposed in the opinion: (1) length of immigration detention, (2) reason for protracted removal proceedings, (3) likelihood of removal, (4) length of immigration versus criminal detention, and (5) whether the immigration detention facility is meaningfully different from a criminal prison. 825 F.3d at 1217-19.

1. Length of detention without a bond hearing

62. The first “critical factor is the amount of time that the [noncitizen] has been in detention without a bond hearing.” *Id.* at 1217. “There is little chance that a [noncitizen]’s detention is unreasonable until at least the six-month mark,” and “detention without a bond hearing may often become unreasonable by the one-year mark.” *Id.* Thus, “[t]he need for a bond inquiry is likely to arise in the six-month to one-year window.” *Id.*

63. Mr. Alekhin has been detained since January 10, 2024, for nearly seventeen months, without a bond hearing. The first factor thus weighs strongly in his favor. *See id.; Dorley*, 2023 U.S. Dist. LEXIS 93091, at *12 (finding that the first factor weighed in the Petitioner’s favor where at the time of filing he was in ICE custody for nearly fifteen months, and at the time of the Report, was detained for twenty months); *Clue*, 2022 U.S. Dist. LEXIS 221848, at *12 (finding similarly for a Petitioner who at the time of filing was in ICE custody for thirteen months, and at the time of the Report, had been detained for twenty-four months).

64. The parole process under 8 U.S.C. § 1182(d)(5)(A), which is Mr. Alekhin’s sole means of seeking release, cannot qualify as a “bond hearing” for purposes of the first *Sopo* factor. The fact that ICE issued a two-sentence denial of parole just hours after Attorney Sheikh made her request, and further failed to address any of her arguments for granting

parole, demonstrates the inherent inadequacy of that mechanism. Ex. 9, Denial of Parole Request. Indeed, numerous courts have held that parole does not suffice to meet procedural due process requirements because it “has none of the features of an individualized bond hearing.” *Mbalivoto*, 527 F. Supp. 3d at 848. The process to decide parole lacks transparency and is “entirely discretionary,” with that unreviewable discretion vested wholly in the very agency [REDACTED]  *Singh v. Barr*, 2020 U.S. Dist. LEXIS 38652, at *19; *see also Djelassi*, 434 F. Supp. 3d at 921 (noting that parole “does not constitute legitimate due process” because it “is purely discretionary and its results are unreviewable by IJs”) (internal quotation marks omitted); *Bermudez Paiz*, 2018 U.S. Dist. LEXIS 217604, at *29 n.14 (noting that parole was “effectively eliminated” during the first Trump administration, indicating that “the parole process is vulnerable to political pressure” and thus cannot “be relied on to furnish even a base level of due process”) (internal quotation marks omitted).⁹ The statutory criteria for parole are also “highly restrictive,” as discussed *supra*, and Mr. Alekhin has “already sought and been denied parole” multiple times, including after he was granted asylum. *Leke*, 521 F. Supp. 3d at 605. More broadly, the Supreme Court in *Boumediene* stated that a statutory replacement for a habeas writ must, at minimum, have an adversarial mechanism and provide an opportunity to rebut the government’s evidence, neither of which are available under the parole procedure. 553 U.S.

⁹ The second Trump administration has stated that it will detain noncitizens like Mr. Alekhin “to the fullest extent permitted by law,” indicating that the discretionary parole process may currently be non-existent in practice. Exec. Order No. 14165, 82 Fed. Reg. 8,467, 8,468 (Jan. 20, 2025) (“The Secretary of Homeland Security shall take all appropriate actions to detain, to the fullest extent permitted by law, [noncitizens] apprehended for violations of immigration law until their successful removal from the United States.”). A number of immigration attorneys in other parts of the country have alleged that ICE has recently implemented a “no release” policy. *See* Madeline Lyskawa, *ICE’s ‘No Release Policy’ Is Back In Effect, Attys Say*, Law360 (Mar. 21, 2025), available at <https://www.law360.com/classaction/articles/2314233/ice-s-no-release-policy-is-back-in-effect-attys-say>.

at 767; *see also Mbalivoto*, 527 F. Supp. 3d at 848 (noting that parole has “no opportunity for an actual hearing before a neutral decisionmaker”).

2. Reason for protracted removal proceedings

65. Second, courts applying *Sopo* will assess “why the removal proceedings have become protracted.” 825 F.3d at 1217. DHS is responsible for the majority of the delays in Mr. Alekhin’s removal proceedings, and he has diligently pursued his right to seek asylum, even without the benefit of counsel.

66. Mr. Alekhin first requested asylum when he presented himself at the Nogales Port of Entry on January 10, 2024, Ex. 2, Printout of ICE Enforce Alien Removal Module, but DHS did not refer him for an interview with an asylum officer until on or about February 21, 2024, over one month later, *see* Ex. 8, Charges of Inadmissibility/Deportability (noting that Mr. Alekhin applied for admission on January 10, 2024, but that the asylum officer issued a discretionary Notice to Appear on February 21, 2024). DHS issued an NTA one week later on February 28, 2024,¹⁰ but the immigration court did not hold an initial hearing in his case until May 9, 2024, approximately nine weeks later.¹¹ Thus, due to government delays, nearly four months passed between the day that Mr. Alekhin appeared for his CBP One appointment and when he first appeared in immigration court.

67. At the preliminary “master calendar” hearing on May 9, 2024,¹² the IJ resolved the allegations and inadmissibility charged in the original NTA, to which Mr. Alekhin admitted and conceded. She scheduled a follow-up hearing for June 13, 2024, when Mr.

¹⁰ The original NTA incorrectly charged Mr. Alekhin as having entered at an unknown location, rather than at Nogales, Arizona, and it was later amended. Ex. 8, Charges of Inadmissibility/Deportability.

¹¹ The original NTA indicated that his first hearing in immigration court would occur on April 4, 2024. Ex. 8, Charges of Inadmissibility/Deportability. The exact reason for the delay in the initial hearing is unknown, but certainly Mr. Alekhin did nothing to cause such delay.

¹² See Ex. 12, Excerpt from Immigration Ct. Tr. 1 (showing that Mr. Alekhin’s first hearing was on May 9, 2024).

Alekhin had to submit his asylum application. At that next hearing, Mr. Alekhin admitted and conceded to DHS's amended charges, which now designated Mr. Alekhin as having arrived at the Nogales, Arizona port of entry rather than entering at an unknown location. *See* Ex. 8, Charges of Inadmissibility/Deportability 5. Mr. Alekhin also informed the judge that he had not yet finished his asylum application, and she set a new submission deadline for July 25, 2024. As discussed *supra*, Mr. Alekhin was proceeding *pro se* at that time and encountered numerous difficulties while trying to represent himself from detention, including having no access to language services to translate his answers on the asylum application 
 

4-5. Despite these great obstacles, Mr. Alekhin timely filed his application on July 25, 2024.

68. Mr. Alekhin's individual merits hearing took place on October 31, 2024. Proceeding *pro se*, he answered the immigration judge's questions about his asylum claim, was cross-examined by the ICE trial attorney, and made closing arguments on his own behalf. The IJ granted Mr. Alekhin's asylum application on November 19, 2024. *See* Ex. 5, Printout of ECAS 3.

69. Then, ICE unreasonably prolonged these proceedings by several months when they appealed the IJ's decision and refused to release Mr. Alekhin during the course of their appeal. ICE waited until just two days before the deadline to file their appeal with the BIA, on December 17, 2025. And when filling out the Notice of Appeal, Form EOIR-26, DHS incorrectly listed Mr. Alekhin's address, and he thus never received notification of their appeal. Ex. 6, ICE Notice of Appeal 3. Still, through his own diligence, he discovered that DHS had appealed his case via the EOIR phone hotline, and he began preparing his response brief originally due on February 26 without an attorney and without knowing DHS's reasons

for appealing his case, which are only articulated in their Notice of Appeal. Ex. 7, Decl. of Pl. in Mot. to Dismiss.

70. On February 13, 2025, immigration counsel entered appearance. Because Mr. Alekhin's original briefing deadline was less than two weeks later, counsel immediately applied for, and the BIA granted, a three-week continuance to prepare the response brief to DHS's appeal. On March 13, Attorney Sheikh filed a motion to summarily dismiss DHS's appeal for deficient service of process. On March 19, both DHS and Attorney Sheikh filed briefs addressing the merits of the appeal. On May 28, more than two months after their response deadline had passed, DHS filed an opposition to the motion to dismiss without any explanation for their delay. By proffering new arguments for the Board to consider more than two months after the filing deadline, DHS needlessly prolongs Mr. Alekhin's detention. The motion to summarily dismiss and the appeal remain pending. *See Ex. 5, Printout of ECAS 1.*

71. The Government's delays at the beginning and the end of Mr. Alekhin's case—approximately four months from the time he arrived in the U.S. to his first hearing in immigration court and more than six months between the IJ's decision and today—have contributed approximately 45 weeks of Mr. Alekhin's total 72 weeks in detention. In contrast, Mr. Alekhin's requested continuances to prepare his asylum application and later his response brief to DHS's appeal resulted in a delay of approximately 9 weeks. The Government is therefore responsible for the vast majority of the delay in his proceedings.

72. Mr. Alekhin's decision to seek asylum—as well as to request two brief continuances that were necessary for him and his immigration counsel to adequately pursue his asylum case—should not be held against him. As the Eleventh Circuit in *Sopo* stated, “[w]e are not saying that [noncitizen]s should be punished for pursuing avenues of relief and

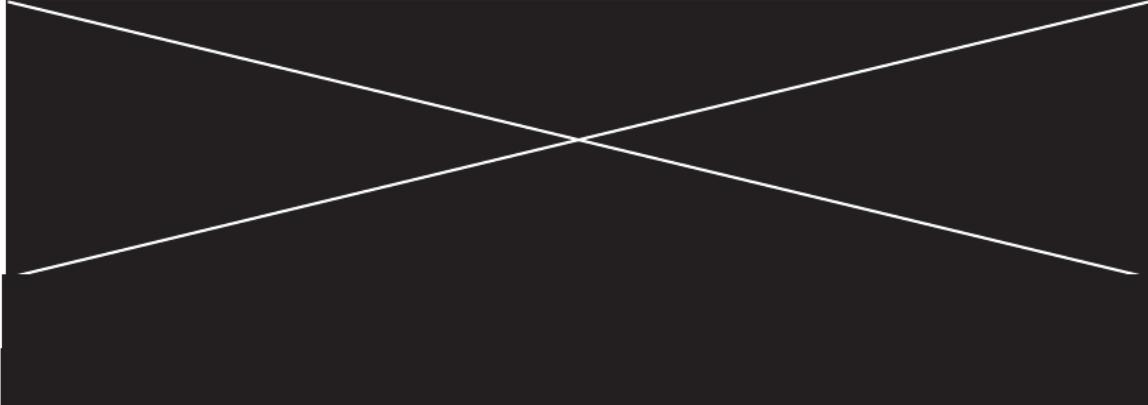
appeals.” 825 F.3d at 1218. Rather, it is “repeated or *unnecessary* continuances, or [...] *frivolous* claims and appeals,” and “[e]vidence that the [noncitizen] acted in bad faith or sought to deliberately slow the proceedings in hopes of obtaining release [that] cuts against the [petitioner].” *Id.* (emphasis added). Furthermore, as discussed *supra*, Congress has indicated an intent to protect the right to seek asylum for those subject to the procedures at § 1225(b). Mr. Alekhin never sought unnecessary continuances nor deliberately delayed the proceedings in his asylum case. Rather, DHS created unnecessary and unreasonable delays, including recently filing a response brief more than two months late without any justification.

73. The second factor thus weighs strongly in Mr. Alekhin’s favor. *See id.* at 1220-21 (finding second factor to be in the petitioner’s favor where he sought asylum and “requested continuances” but “the delays he caused were negligible compared to the amount of time it took for his case to move back and forth between the IJ and the BIA three times” and “the government did not respond to [his] FOIA request for months”); *J.N.C.G.*, 2020 WL 5046870, at *6 (second factor “weighs heavily in Petitioner’s favor” where DHS filed its brief late, BIA delayed in issuing a decision, and “Petitioner has—at the very least—pursued a good faith, non-frivolous argument”).

3. Likelihood of removal

74. Third, courts applying the *Sopo* factors will determine “whether it will be possible to remove the [noncitizen] after there is a final order of removal.” *Sopo*, 825 F.3d at 1218. First, it is highly unlikely that DHS will be able to obtain a removal order against Mr. Alekhin. An IJ has already granted him asylum, and ICE committed a substantial procedural error by failing to serve him their Notice of Appeal, meriting dismissal of the appeal.

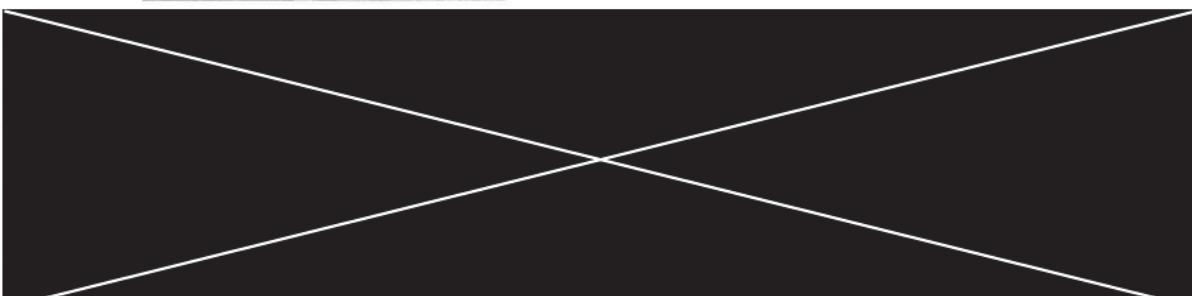
75. Even in the unlikely scenario that Mr. Alekhin is somehow ordered removed,



Therefore, this factor,

which is less relevant than the other *Sopo* factors, either favors Mr. Alekhin or is neutral. *See Khan v. Whiddon*, No. 2:13-CV-638-FTM-29MRM, 2016 WL 4666513, at *6 (M.D. Fla. Sept. 7, 2016) (“[E]ven assuming that there is a high likelihood that petitioner’s appeal will result in removal, this factor standing alone does not supersede the other factors that weigh in petitioner’s favor.”); *Clue*, 2022 U.S. Dist. LEXIS 221848, at *14 (granting habeas relief and ordering bond hearing under *Sopo* although the Petitioner “will be removed...fairly quickly and without issue”); *Dorley*, 2023 U.S. Dist. LEXIS 93091, at *10 (holding the same).

76. When assessing the third *Sopo* factor, the Eleventh Circuit has approved taking into account the “foreseeability of proceedings concluding in the near future (or the likely duration of future detention).” *Sopo*, 825 F.3d at 1218 (citing *Reid v. Donelan*, 819 F.3d 486,



¹⁶ See U.S. Immigr. & Customs Enf’t, *Fiscal Year 2024 Annual Report* 23-34 (2024), available at <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>.

¹⁷ *Id.* at 100.

500 (1st Cir. 2016)). Accordingly, this court has found in the Petitioner’s favor on the third *Sopo* factor where the Petitioner had exercised their right to appeal and the case was pending before the Board of Immigration Appeals with a several-months-long processing time. *See Clue*, 2022 U.S. Dist. LEXIS 221848, at *16-17; *see also Dorley*, 2023 U.S. Dist. LEXIS 93091, at *16 (finding in the Petitioner’s favor on this factor, where the IJ’s written decision was still pending and Petitioner’s counsel anticipated pursuing an appeal).

77. Here, it is ICE, not Mr. Alekhin, who has appealed the IJ’s decision granting his asylum application. Mr. Alekhin’s proceedings may continue for many more months, if not even years. In light of the BIA’s backlog,¹⁸ it could take months for it to rule in his case, and ICE has explicitly stated that they will not release Mr. Alekhin from detention during the pendency of their appeal. If the BIA grants ICE’s appeal and remands to the IJ for further proceedings, that will likewise prolong Mr. Alekhin’s detention for even longer. If the BIA somehow reverses the IJ and orders Mr. Alekhin to be removed, he would file a petition for review before the Eleventh Circuit Court of Appeals and seek a judicial stay of removal.

Accordingly, under any of the above scenarios, the likelihood of removal [REDACTED] [REDACTED] is slim at best. Therefore, the third factor weighs in favor of Mr. Alekhin, or is at worse neutral and of limited weight.

4. Comparison of duration of immigration and criminal detention

78. Fourth, under *Sopo*, courts will evaluate “whether the [noncitizen]’s civil immigration detention exceeds the time the [noncitizen] spent in prison for the crime that

¹⁸ According to EOIR’s most recent data, the BIA backlog reached an all-time high of 119,131 cases in Fiscal Year 2024, up from 113,604 from the prior fiscal year. Exec. Off. of Immigr. Rev., *Adjudication Statistics* (Oct. 10, 2024), <https://www.justice.gov/eoir/media/1344986/dl?inline>. To make matters worse, the Trump Administration recently fired nearly half of the members of the BIA, and it has no intent to replace them. Reducing the Size of the Board of Immigration Appeals, 90 Fed. Reg. 15,525, 15,528 (Apr. 14, 2025).

rendered him removable.” 825 F.3d at 1218. Here, Mr. Alekhin has no criminal history anywhere in the world, including arrests. Thus, the fourth *Sopo* factor weighs strongly in his favor. *See Dorley*, 2023 U.S. Dist. LEXIS 93091, at *14 (finding that this factor weighed in the Petitioner’s favor where he was in state custody for only three-and-a-half months but was detained by ICE for 20 months).

5. Whether the immigration detention facility is similar to criminal detention

79. The final factor under *Sopo*—which, as discussed *supra*, should weigh particularly heavily for asylum seekers detained under § 1225(b)—is “whether the facility for the civil immigration detention is meaningfully different from a penal institution for criminal detention.” 825 F.3d at 1218. Extended civil immigration detention that bears similarities to criminal detention makes the immigration detention more unreasonable. This court has found in two separate instances, including as recently as 2023, that “detention at the Folkston ICE Facility is not meaningfully different from a penal institution or criminal detention.” *Dorley*, 2023 U.S. Dist. LEXIS 93091, at 15*; *see also Clue*, 2022 U.S. Dist. LEXIS 221848, at *16 (finding in the Petitioner’s favor on this factor even though his “evidentiary support [was] sparse, consisting primarily of his own declaration”). In *Dorley*, this court indicated that the following demonstrated “punitive, prison-like conditions”: “solitary confinement, head counts, holding cells, locked dorms, no contact visits, limited recreation, razor wire covered fences, and inadequate mental health services.” 2023 U.S. Dist. LEXIS 93091, at *15. *See also Clue*, 2022 U.S. Dist. LEXIS 221848, at *15 (noting that the Petitioner “must wear ‘prison garb,’ [] sleeps in a cell with another individual, and [] has his hands shackled to his waist when he is being transported throughout the facility”).

80. Mr. Alekhin's personal experiences over the past year, corroborated by ICE's own detention standards, demonstrate that these punitive conditions at Folkston persist¹⁹:

81. Upon arrival at the facility, noncitizens are issued what ICE refers to as "institutional clothing," which is highly similar in appearance to a prison uniform. U.S. Immigr. & Customs Enf't, *Performance-Based National Detention Standards* 51, 328 (2011) (hereinafter "PBNDS"). For example, Mr. Alekhin himself had to relinquish his clothes and jewelry, and he now wears a bright orange uniform. Ex. 1, Decl. of Pl. 1.

82. Every day there are up to five headcounts that may each last up to an hour, where detained persons are forbidden from moving or speaking. *Id.* at 2; *see also* PBNDS at 111-12 (noting that formal counts take place at least every eight hours, and it is forbidden to move during count). Mr. Alekhin notes several instances where a few individuals would talk or move during count time. Although only a few individuals had not acted according to the rules, everyone in the approximately 116-person unit would be punished, with officers turning off the TVs and prohibiting access to the yard until about the following day. Ex. 1, Decl. of Pl. 2. Now that Mr. Alekhin is in medium security, he and his cellmate often locked together in their cell during the up to one-hour count time. *Id.*

83. Mr. Alekhin has always been housed with people who have criminal convictions, including for DUI, domestic violence, money laundering, smuggling, or drug-related crimes. *Id. See also* PBNDS at 62, 74 (noting custody classification "levels" based on criminal history).

¹⁹ As this court has noted, Folkston was originally a prison that housed individuals with criminal convictions. *See Georgia Dep't of Corrs., Private Prisons, available at* <https://gdc.georgia.gov/organization/about-gdc/divisions-and-org-chart/facilities-division/private-prisons> (stating that "offenders" were previously housed at the D. Ray James Correctional Facility); GEO Grp., *Folkston ICE Processing Center* (2025), *available at* <https://www.geogroup.com/facilities/folkston-ice-processing-center/> (stating that, "in partnership with the Federal Bureau of Prisons," GEO "create[d] the Folkston ICE Processing Center at the existing D. Ray James site"). *See also* *Clue*, 2022 U.S. Dist. LEXIS 221848, at *16 ("Clue has shown the Folkston ICE Facility was previously a BOP facility used to house federal inmates.").

84. Every night from around midnight until 5:30 am, Mr. Alekhin and his cellmate are locked into a ~2.5m x 5m cell that they cannot leave. *Id.* If there is a fight, everyone in the unit will be punished by being locked into their cells for a full-day. *Id.* The yard adjacent to Mr. Alekhin's unit, where he goes for outside recreation, is lined with razor wire. *Id.*

85. Mr. Alekhin has also personally experienced being placed in solitary confinement, referred to by ICE as "disciplinary segregation," due to an incident where he accidentally stepped on the back of a facility officer's shoe. Despite apologizing profusely, he was nonetheless punished with 20 days in solitary confinement. *Id.* During that time, he was locked by himself almost all-day in a ~2.5m x 5m cell. *Id.* Each day, he could choose between either one hour of TV time or two hours of "outside time." During "outside time," he would nonetheless be locked in a ~2.5m x 3m metal cage, albeit one that was outside. *Id.* See also PBNDS at 179-99 (describing "segregation," which is also used for allegedly non-punitive reasons such as "disability, medical or mental illness").

86. When Mr. Alekhin is transferred from one facility to another, or even moved within the Folkston complex, he is forced to wear handcuffs strapped to the waist as well as foot restraints. He had to wear these restraints during almost the entirety of the approximately twelve-hour trip from Arizona to Georgia, even when using the bathroom. Ex. 1, Decl. of Pl. 2. PBNDS at 209 (authorizing use of steel handcuffs, leg irons, and belly chains).

87. Although Mr. Alekhin has worked voluntarily, he was paid \$2.75/day and worked between three and four hours per day. He thus earned less than a dollar per hour. Ex. 1, Decl. of Pl. 3. Since calls from the facility are not free, he would have had to work more than two days to afford a one-hour call with [REDACTED] *Id.* The PBNDS authorizes payment as low as \$1 for eight hours of work. PBNDS at 407.

88. Mr. Alekhin has experienced difficulties in trying to represent himself *pro se* as a non-native English speaker with no prior knowledge of the U.S. immigration or legal systems. He notes that almost all legal cases available from the law library are only available in English, yet there is no access to translation services or to the Internet. When he asked the law librarian to assist him in translating a letter [REDACTED] she merely said the law library cannot do that. Ex. 1, Decl. of Pl. 5. Mr. Alekhin ended up having to rely on his [REDACTED] to help him prepare his asylum case. *Id.*

89. Indeed, the PBNDS provides sparse information on how ICE will meet the language access needs of noncitizens who are of limited English proficiency yet are forced to pursue their immigration cases while detained. It recommends merely “contacting pro bono legal-assistance organizations” on the ICE-provided list and suggests that the law librarian or other detainees may help out. PBNDS at 426. These recommendations do not account for the practical realities of immigration detention. Of the two organizations on the *pro bono* list for Georgia’s Stewart Immigration Court, one provides services primarily to those with ties to Washington, D.C., Maryland, and Virginia, and the other is merely an information line.²⁰ Furthermore, it is unclear how one law librarian could singlehandedly provide effective legal assistance at a facility that currently detains 613 people.²¹ And while it is unknown what percentage of those in immigration detention speak fluent enough English to assist other noncitizens in legal translation, it is commonsense that such individuals have their own

²⁰ See Exec. Off. of Immigr. Rev., *List of Pro Bono Legal Services* (Apr. 2025), available at <https://www.justice.gov/eoir/file/probonofulllist/dl>.

²¹ See Transactional Recs. Access Clearinghouse, *Detention Facilities Average Daily Population* (Mar. 2025), available at <https://tracreports.org/immigration/detentionstats/facilities.html>. The PBNDS makes reference to a law “librarian” in the singular, indicating that it does not contemplate a facility having more than one such staff member. PBNDS at 426.

removal cases to concern them. Indeed, Mr. Alekhin himself has “been asked [REDACTED]

 interpretation so many times that [he] cannot count.” Ex. 1, Decl. of Pl. 4.

90. The PBNDS makes reference to several other practices that *Dorley* considered to indicate punitive conditions, including the use of holding cells, PBNDS at 99, no or limited contact visits, *id.* at 179 (stating that where there is a limited contact visit, it is permissible for the facility to require the detained person to afterwards undergo a strip search), and limited recreation time, *id.* at 371 (requiring recreation time of only one hour a day).

91. Thus, given the undeniably restrictive conditions at Folkston, the fifth *Sopo* factor also weighs in Mr. Alekhin’s favor. As discussed *supra*, this factor should weigh particularly heavily in light of Congress’s intent to limit the placement of asylum seekers with no criminal history whatsoever, like Mr. Alekhin, in punitive conditions.

6. Additional Relevant Factors

92. The Eleventh Circuit emphasized that its “list of factors is not exhaustive” and “the factors that should be considered will vary depending on the individual circumstances present in each case.” *Sopo*, 825 F.3d at 1218. Here, the additional factors of ICE’s failure to follow its own binding Directive to release individuals who were granted humanitarian relief, Ex. 10, ICE Policies at 2 (“[I]t is ICE policy to favor release of [noncitizens] who have been granted protection relief...”), Mr. Alekhin’s compliance with U.S. immigration procedures, Circumvention of Lawful Pathways, 88 Fed. Reg. 31,314, 31,314-17 (May 16, 2023) (stating an executive policy to “encourage[] migrants to avail themselves of lawful, safe, and orderly pathways” like CBP One rather than entering without inspection), and the fact that he has won asylum, *Sopo v. U.S. Atty Gen.*, 825 F.3d 1199, 1212 (11th Cir. 2016), *vacated*, 890 F.3d 952 (11th Cir. 2018) (recognizing the significant liberty interest of a habeas petitioner whose asylee status had been terminated); *see also* 8 C.F.R. § 1208.24 (procedures for terminating

asylee status, in recognition of the due process rights of people granted asylum), Supplementary Information, 62 Fed. Reg. 10,312, 10,318 (Mar. 6, 1997) (distinguishing between the detention of those who passed a credible fear interview versus those who were granted asylum, and indicating that the latter are more likely to merit release), further demonstrate that his continued detention is unreasonable.

93. Accordingly, all of the enumerated *Sopo* factors weigh strongly in Mr. Alekhin's favor and underscore his unconstitutionally prolonged detention.

B. Mr. Alekhin's continued detention without bond is also unreasonable under the Mathews test and must be remedied with a bond hearing with proper procedural protections.

94. Application of the test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), also shows that Mr. Alekhin's continued detention violates due process and that he merits a bond hearing with the burden on the Government by clear and convincing evidence with consideration of ability to pay. Some courts have applied the three-part balancing test from *Mathews* in determining whether a noncitizen's prolonged detention, including detention under § 1225(b), violates due process:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. at 335; *see Ortiz-Castillo*, 2024 WL 756075, *2 (applying *Mathews* for prolonged § 1225(b) detention); *Rodriguez-Figueroa v. Barr*, 442 F. Supp. 3d 549, 563 (W.D.N.Y. 2020) (same); *Black*, 103 F.4th at 138 (applying *Mathews* to § 1226(c) prolonged detention claim); *Velasco Lopez*, 978 F.3d at 851 (applying *Mathews* to prolonged § 1226(a) detention); *Hernandez-Lara*, 10 F.4th at 35 (same); *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1341 (M.D. Ga. 2020) (same).

95. Under the *Mathews* test, Mr. Alekhin's detention without a bond hearing has become unreasonable. First, "the private interest affected by the official action is the most significant liberty interest there is—the interest in being free from imprisonment." *See Black*, 103 F.4th at 151 (citing *Velasco Lopez*, 978 F.3d at 851). As discussed *supra*, this interest is only heightened by the fact that Mr. Alekhin has been imprisoned in punitive, prison-like conditions despite having no criminal history whatsoever, has won asylum, and has maintained close ties with individuals living lawfully in the U.S., including the U.S. citizen ██████████. Thus, the first *Mathews* factor undoubtedly falls in Mr. Alekhin's favor.

96. The second *Mathews* factor, the risk of erroneous deprivation and value of additional safeguards, also heavily favors Mr. Alekhin. Mr. Alekhin is statutorily ineligible for review of his custody by an Immigration Judge. And as discussed *supra*, discretionary parole by ICE has "almost nonexistent procedural protections," which "markedly increase[s] the risk of an erroneous deprivation of [Mr. Alekhin's] private liberty interests." *See Black*, 103 F.4th at 151; *Mbalivoto*, 527 F. Supp. 3d at 848 (finding that "parole...has highly restrictive criteria and limited transparency, is subject to the unreviewable discretion of the Attorney General, and has no opportunity for an actual hearing before a neutral decisionmaker"). Here, ICE has provided Mr. Alekhin with even less process than its already minimal requirements, indicating the inadequacy of the statutory parole mechanism. As discussed *supra*, ICE's own Directive requires it to conduct an individualized parole analysis for those who have been granted humanitarian relief like asylum. *See* Ex. 10, ICE Policies. But ICE's two-sentence denial of Mr. Alekhin's parole request within mere hours after it was submitted indicates that it did not conduct any individualized analysis based on his

immigration counsel’s arguments and supporting evidence, contrary to the requirements of the Directive. *See Ex. 9, Denial of Parole Request.*

97. “Moreover, ‘as the period of . . . confinement grows,’ so do the required procedural protections no matter what level of due process may have been sufficient at the moment of initial detention.” *Velasco Lopez*, 978 F.3d at 853 (citing *Zadvydas*, 533 U.S. at 701). Despite Mr. Alekhin’s nearly seventeen-month-long detention, his immigration case is pending before the BIA, and DHS filed new arguments recently on May 28, more than two months after their response deadline. It will thus likely take at least several additional months before the BIA issues a decision, which nonetheless may not resolve Mr. Alekhin’s removal proceedings. An individualized bond hearing before the IJ with the Government bearing the burden by clear and convincing evidence and consideration of ability to pay would significantly decrease the likelihood that Mr. Alekhin is erroneously deprived of his liberty. *See id.* at 853, 856 (concluding the Government’s “substantial resources,” particularly its access to information compared to the Petitioner, “demonstrate[] the value for due process purposes of...burden-shifting” at a bond hearing, and finding that the “clear and convincing evidence standard of proof provides the appropriate level of procedural protection” where the “potential injury is as significant as the individual’s liberty”); *see also J.G.*, 501 F. Supp. 3d at 1339 (“Shifting the burden of proof...can reduce the chances that erroneous detentions will be ordered.”); *Black*, 103 F.4th at 158 (finding that “refusing to consider ability to pay and alternative means of assuring appearance creates a serious risk that the noncitizen will erroneously be deprived of the right to liberty purely for financial reasons”).

98. Finally, the analysis of the Government’s interest and the burden on it of additional procedures also favors Mr. Alekhin. An IJ bond hearing with the burden on the

Government and consideration of ability to pay imposes minimal cost and inconvenience, since IJs regularly hold bond hearings every day in immigration courts across the country. Meanwhile, the Government “has not articulated an interest in the prolonged detention of noncitizens,” like Mr. Alekhin, “who are neither dangerous nor a risk of flight.” *Black*, 103 F.4th at 155 (citing *Velasco Lopez*, 978 F.3d at 854)). “On the contrary, shifting the burden of proof to the Government to justify continued detention promotes the Government’s interest—one we believe to be paramount—in minimizing the enormous impact of incarceration in cases where it serves no purpose.” *Velasco Lopez*, 978 F.3d at 854. Indeed, ICE referenced neither the danger nor the flight risk rationale in its two-sentence denial of Attorney Sheikh’s parole request, instead citing their own pending appeal. If Respondents believe that it is essential to use substantial governmental resources to detain Mr. Alekhin on a long-term basis, they should welcome a bond hearing to confirm so.

99. Accordingly, Mr. Alekhin’s continued detention without bond is also unreasonable under the *Mathews*, requiring a bond hearing with sufficient procedural protections.

C. Mr. Alekhin is entitled to a bond hearing where the government must justify his continued detention.

100. To remedy Mr. Alekhin’s unreasonably prolonged detention, this Court should order a bond hearing before an IJ with sufficient procedural protections. When a noncitizen’s detention without bond has become unconstitutionally prolonged, to lessen the risk of erroneous deprivation of liberty based solely on indigency, due process requires a bond hearing where “(1) the government must bear the burden of proof; (2) the government must prove the noncitizen’s dangerousness by clear and convincing evidence, and the noncitizen’s risk of flight by a preponderance of the evidence; and (3) the “immigration court [must] consider both a [noncitizen]’s ability to pay in setting the amount of bond and alternative conditions of

release.” *Reid v. Donelan*, 390 F. Supp. 3d 201, 225 (D. Mass. 2019); *see also Hernandez-Lara*, 10 F.4th at 41 (ruling that government bears burden at bond hearing by clear and convincing evidence for danger and preponderance of evidence for flight risk); *Black*, 103 F.4th at 138 (under *de novo* review, upholding district court ruling ordering bond hearing with Government bearing burden by clear and convincing evidence, consideration of ability to pay and alternatives to detention); *Velasco Lopez*, 978 F.3d at 857 (“[T]he district court’s order requiring the Government to prove that Velasco Lopez is a danger to the community or a flight risk by clear and convincing evidence to justify his continued detention ‘strikes a fair balance between the rights of the individual and the legitimate concerns of the state.’”); *German Santos*, 965 F.3d at 206 (“Because [Petitioner’s] detention has become unreasonable, he has a due process right to a bond hearing, at which the Government must justify his continued detention by clear and convincing evidence.”); *see also J.G.*, 501 F. Supp. 3d at 1341 (ordering bond hearing with burden on ICE by clear and convincing evidence).

101. The exceptional circumstances of Mr. Alekhin’s case also demand the additional procedural protections outlined above, since ICE has disregarded the few procedural protections already in place to safeguard his liberty. DHS has admitted that they did not serve Mr. Alekhin their Notice of Appeal, which was the only document containing their reasons for appealing his case. *See* Ex. 5, Printout of ECAS. Then, they prolonged proceedings by filing their opposition to Attorney Sheikh’s motion to dismiss for deficient service of process more than two months after their deadline had passed and without providing any reason for the delay. *Id.*; BIA Practice Manual, Chapter 5.11 (setting a thirteen-day response deadline). Yet ICE (a sub-agency of DHS) nonetheless stated that it would not conduct an individualized custody review for Mr. Alekhin during the pendency of

DHS's procedurally deficient appeal. Ex. 9, Denial of Parole Request. As discussed *supra*, this refusal flouts ICE's own binding policy favoring the release of people like Mr. Alekhin in this situation. Thus, DHS is arbitrarily keeping Mr. Alekhin detained, at great cost to both himself and the Government, based on an appeal that they acknowledge they never gave him notice of and contrary to their own policy.

102. Given that ICE is continuing to detain Mr. Alekhin contrary to its own policy and based on an appeal it never served on him, it should at least be obligated to justify Mr. Alekhin's continued detention by clear and convincing evidence. *See Jarpa v. Mumford*, 211 F. Supp. 3d 706, 722 (D. Md. 2016) ("Placing the burden on Mr. Jarpa at the hearing, therefore, would be inconsistent with having found his continued detention unconstitutional"); *Deng Chol A. v. Barr*, 455 F. Supp. 3d 896, 905 (D. Minn. 2020) (holding that "it would appear to make little sense to afford petitioner less due process than is afforded other civil, and even some criminal, detainees" where petitioner had moved to terminate his removal proceedings based on vacated conviction).

CLAIMS FOR RELIEF

COUNT I

**VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO
THE U.S. CONSTITUTION**

103. Mr. Alekhin re-alleges and incorporates paragraphs 1 to 101 above.

104. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Cont. amend. V.

105. Civil immigration detention violates due process if it is not reasonably related to its purpose. *See Zadvydas*, 533 U.S. at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)); *Demore*, 538 U.S. at 513. As mandatory detention becomes increasingly prolonged,

a “sufficiently strong special justification” is required to outweigh the significant deprivation of liberty. *Zadvydas*, 533 U.S. at 690-91.

106. Mr. Alekhin’s detention without a bond hearing, which has lasted for more than sixteen months and could last for many more months or years while his removal proceedings remain pending, is not reasonably related to the statutory purpose of ensuring his appearance for removal proceedings or preventing danger to the community. Under these circumstances, his detention violates his procedural due process rights.

107. To justify Mr. Alekhin’s ongoing prolonged detention, due process requires the Government to establish, at an individualized hearing before a neutral decision-maker, that Mr. Alekhin’s detention is justified by clear and convincing evidence, taking into consideration whether conditions of release might mitigate risk of flight and Mr. Alekhin’s ability to pay bond.

COUNT II

VIOLATION OF THE SUSPENSION CLAUSE TO THE U.S. CONSTITUTION

108. Mr. Alekhin re-alleges and incorporates paragraphs 1 to 101 above.

109. The Suspension Clause incorporates the historical common law mechanism to challenge unlawful detention by the Executive. U.S. Constitution, art. I, § 9, cl. 2; *Preiser*, 411 U.S. at 484 (“It is clear...from the common-law history of the writ...that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody.”).

110. Statutory replacements for habeas are constitutionally inadequate where they do not have an adversarial mechanism and there is no means to assess the sufficiency of the Executive’s evidence, among other requirements. *Boumediene*, 553 U.S. at 791.

111. Mr. Alekhin's prolonged detention, which has lasted for a year and could last for many more months or years while his removal proceedings remain pending, violates his rights under the Suspension Clause insofar as discretionary parole is his only means for release. The parole mechanism under 8 U.S.C. § 1182(d)(5)(A) is constitutionally inadequate because ICE's parole decisions are entirely discretionary, unreviewable by any other authority, vulnerable to political pressure, and do not require ICE to proffer a shred of evidence justifying the noncitizen's continued detention. 8 U.S.C. § 1226(e); C.F.R. § 1003.19(h)(2)(i)(B).

112. To justify Mr. Alekhin's ongoing prolonged detention, the Suspension Clause independently requires the Government to establish, at an individualized hearing before a neutral decision-maker, that Mr. Alekhin's detention is justified by clear and convincing evidence, taking into consideration whether conditions of release might mitigate risk of flight and Mr. Alekhin's ability to pay bond.

PRAYER FOR RELIEF

WHEREFORE, Mr. Alekhin prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Order Respondents to show cause why the writ should not be granted within the **statutorily mandated three days, or at most twenty days** for good cause, and, if necessary, set a hearing on this Petition within **five days** of the return, pursuant to 28 U.S.C. § 2243;
- c. Grant a writ of habeas corpus;
- d. Declare that Mr. Alekhin's detention without a bond hearing violates the Due Process Clause of the Fifth Amendment;
- e. Declare that Mr. Alekhin's detention, where parole is the only means of release, violates the Suspension Clause;

- f. Order Mr. Alekhin's release within 30 days unless Respondents schedule an individualized bond hearing before an Immigration Judge in which DHS bears the burden of establishing that Mr. Alekhin presents a risk of danger or flight by clear and convincing evidence, even after consideration of alternatives to detention and taking into account Mr. Alekhin's ability to pay bond;
- g. Award reasonable attorney's fees and costs pursuant to Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
- h. Grant such further relief as this Court deems just and proper.

Dated: June 3, 2025

Respectfully submitted,

/s/ Felix Montanez
Felix Montanez, Esq.
Georgia Bar No. 534486
Tel: 912 604 5801
felix.montanez@preferentialoption.com
Pro Bono Counsel for Petitioner

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT
TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. I have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: June 3, 2025

Respectfully submitted,

/s/ Alizeh Sheikh
Alizeh Sheikh, Esq.
Georgia Bar No. 283526
Tel: (404) 786-6900
alizehsheikh@comcast.net
*Immigration Attorney for Petitioner**

*Submission of this verification is not intended as an entry of appearance before this court.